Mark Wagner: This session is a whirlwind session on all of the provisions within the Energy Independence and Security Act of 2007, which was passed by Congress back in December and signed by the president. Section 432 is a very important section. It calls for energy managers at covered facilities and requires comprehensive evaluations. Now, covered facilities are 75 percent of all your facilities at each agency, you need an energy manager at all of those covered facilities. You need to conduct comprehensive evaluations for 25 percent of those covered facilities each year. So what happens is by four years you've done comprehensive evaluation on all your facilities. Re-commissioning is to be identified and assessed by the energy managers.

Each one of these Energy manager shall – Covered facilities shall be identified. Comprehensive evaluations shall be completed. Re-commissioning measures shall be identified. And implementation of energy measures may. It's a big difference in legislation from shall to may. When you tell your kids you shall do this or they may do this. They have an option. Okay.

This provision, the implementation provision, people want to move forward, feel free.

Jennifer Schafer: This was changed in conference for a number of reasons. One is there was pushback from some of the agencies about having to do the implementation because it said you had to do everything with a 10 year payback or better. They made the change in conference. And also they discovered that they score these bills. Which means CBO, which is the Congressional Budget Office says, "This is going to cost so much money for the federal government over however many years." They felt that changing it from shall to may saved them a little money. Not actual real money. This was money that they had to play with to pass a bill. So that's why that was changed.

Mark Wagner: Now, this is very important and there's a lot. I'm going to move on to some other sections. But I want you to know that this is so important that we have a separate session coming up Tuesday at 10:30 in this room, just on this section. Just on what's on this slide. Because DOE has started to promulgate guidance for this. And that session is going to be on the guidance. And it's going to be a drill down session on this one. Because it's so important we decided to break out and drill down. So if you're at all interested in this, because it's a very important section that's requiring a lot to do, there'll be a drill down session on this. And the next few slides that I'm going to cover.

If you decide that I'm going to implement a project, then the legislation requires a follow up be conducted on the equipment to make sure it's commissioned, that you have an O&M, operation maintenance plan, that the system is performing, and that the energy and water savings are measured.

Jennifer Schafer: And let me mention that that's for regardless of how you do the project the same protocols are in place. If you do it with appropriated dollars, a UESC, or ESPC, it doesn't matter. All of it has to be measured and verified and these apply to all kinds of projects that are for energy efficiency.

Mark Wagner: Right. So we know we've measured finance projects. We now have to measure if you use appropriated funds. Guidelines, as I said, DOE is to promulgate guidelines within six months for the designation of energy managers and the evaluations. Those guidelines are currently in – they're being –

Jennifer Schafer: They're in concurrence.

Mark Wagner: Concurrence. Thank you. At DOE. And at 10:30 on Tuesday, and in this session in this room, we're going to be going over what that guidance looks like. Okay? You're going to have a preview because it's not final, but we're going to cover it.

So that's why that guidance is almost done on time. And six more months from now we're going to – the DOE will have guidelines on how to implement measures and conducting the follow up.

After that, we also have to implement a web based tracking system under section 432, which will be used by the energy managers to certify compliance with the evaluations, with the implementation, and with the follow up. So, there's going to be this huge web based tracking system that's going to get created to track all this stuff. And let's talk a little more about that.

DOE's going to develop this tracking system that tracks the covered facilities, the status of meeting the commissioning requirements, the cost savings, the measured savings and the persistence of those savings, as well as benchmarking information. All of that's going to be on this web based tracking system. We're going to get into that in that drill down session tomorrow.

They're supposed to make it as streamlined as possible and coordinate with other agencies. And this is available to the public and to Congress with some certain national security exemptions for DOD and National Security Facilities. So they want this web based tracking system to be rather transparent and available.

The benchmarking system is also supposed to be developed by DOE to help benchmark the energy use data for metered facilities – and it's supposed to be tied into the web based tracking system as well.

Scorecards. If you think you were going to get away from those scorecards if there was a new administration, oh no. Congress has embraced scorecards. They put them in the law, put them in the bill. Scorecards shall be issued by OMB. So they will continue. And they look pretty – I don't think there's anything in here that's not going to make them look anything like what they're kind of looking like right now.

Jennifer Schafer: Yeah. There's no real change.

Mark Wagner: But they are now in statute. This isn't just something that the executive branch is doing now. This is required. They've authorized such sums as necessary.

This is important. The funding options. Congress has said that you can use any combination of appropriated and financing funding to meet these requirements.

Jennifer Schafer: And that is a switch. This is the first time that it looks like we're allowed to use appropriated dollars in combination to buy down a project, to make things work, to be able to afford more expensive renewables and that type of thing. How that ends up working in the long term is another question and not yet figured out.

Mark Wagner: In other words, they're letting you use all the tools that you can to meet these requirements.

Alright. Let's move on to section 433. There are new standards for new and renovated buildings. These are the percentage reductions in the future years at five year increments that you must reduce your fossil fuel energy. By these amounts. I don't know if you've noticed but that's 100 percent there in 2030. This is for new and major renovated buildings using a 2003 baseline. This is pretty significant.

There needs to be a certification system for green buildings that's going to be identified by DOE. They didn't say use LEED. They didn't say use any other system. They said, "You guys go figure it out." There's a lot of debate and discussion whether Congress wanted to pick a certification system.

Jennifer Schafer: Some bills did pick a certification system. These provisions were really developed by a committee of committees. There were 11 different committees of the House and Senate that worked on these provisions and a lot of them really wanted to get into federal energy use. So you see provisions in here that look conflicting – that just look like they're stepping on one another. So I think the regulations that get written along with this will help straighten a lot of that out.

Mark Wagner: You also see a lot of repetitive provisions.

Jennifer Schafer: Yeah. A lot of repetition.

Mark Wagner: Section 434. Large capital investments have to be lifecycle cost effective. And that includes large capital energy investments for existing buildings that aren't a major renovation. So they're making kind of a distinction here between a major investment and a large capital investment. You can make a large capital investment with it not being part of a major renovation, particularly in the heating and cooling systems. There's going to be some guidance to say if a chiller a large capital investment. So those must be lifecycle cost effective.

The agencies are to develop guidance for this within six months. Have you guys done it yet? It's been seven months. Okay.

Metering. This is a big one. Metering, as we all know the metering provision in the 2005 energy bill required metering for all federal facilities for the purpose of saving energy. It has been expanded to not just electricity but to natural gas and steam. And a requirement date for that is 2016.

To summarize, the GSA has been taxed with developing the Office of High Performance Green Federal Buildings. That acronym is unpronounceable – HPGFB.

Jennifer Schafer: There was a difference between the House and the Senate on who should be given that task. Should it be Department of Energy? Should it be GSA? The GSA is where they ended up.

Mark Wagner: I think the Senate had one version and the House had another. And GSA won the coin flip.

What this building's going to do is going to coordinate with a new office of commercial high performance buildings. They're establishing an advisory board identifying improvements to disseminate information, identify standards, and establish green practices. You can read all this. They're also supposed to analyze budget practices and look at lifecycle cost issues and recommend changes to Congress on this. To identify what the barriers are, guidance, tools and explore incorporating those benefits in a cost budget analysis to help lifecycle cost budgeting and decision making in the future. So they're getting pretty serious on trying to incorporate LCC into the budgeting processes.

The incentives. They also want to encourage and expedite the use of not only technology but recognition and awards for the retention of savings. And Congress is serious about this stuff. They're going to say, "We want you to report back to us on this. Okay. Not just telling you to do it. We're telling you to do it and come back and please tell us how you've complied, where your budgeting construction process is, inconsistencies, where your standards are, what budget alternatives you were working on with OMB, is it streamlined, have you identified savings, what about the self-sustaining green technologies. Oh, also take a look at what state and local folks are doing and report on that because sometimes they have good ideas out there. And finally, recommend to us what we should be doing in this area."

So you can see, I think Congress has got into this and were pretty serious about this. There were many hearings from the 11 committees that Jennifer talked about.

Certification system. This is again, where you see some duplication going on here.

Jennifer Schafer: But there is some thinking that, you know the web based tracking and the certifications can all be merged. If you are able to develop something that's really interactive and web based, maybe you could do all of this together and you wouldn't have a whole bunch of different tracks on reporting, certifying and all the many requirements that we aren't very excited about.

Mark Wagner: So they're to develop the high performance – the certification system for the high performance federal building. And they're supposed to evaluate these certification systems every five years. Again, they didn't call out any particular system. But let GSA figure out which one it should be.

Oh. Maybe that's GAO to get involved. Don't we just love GAO? For an audit to conduct – to determine how the implementation's going. So Congress has said, "Ah, we don't want you to just report back to us. We'll have GAO take a look at what you're doing on the lifecycle costing, the coordination between the agencies including DOE and OMB. How's that new director of that new high performance green federal building's doing? The design of the measures and the data collection." That's all that GAO's supposed to review.

Scorecards. Again, environmental stewardship scorecard, which we're already doing much of to measure an agency's implementation on this so there may or may not be some tweaking. The good folks, Cindy Vallina and Rob Sandoli, will be looking at this to see if there's anything they're doing on the scorecard and procedure that needs to be tweaked or changed as a result of these. But they're pretty much – I would say Congress embraced what the OMB is already doing on the scorecarding procedure.

And I might mention, Monday, today at 4:00 in this room, will be a session on scorecards and how to get green on your scorecard. There was just an agency meeting of all the heads of agencies last week?

Jennifer Schafer: Yes.

Mark Wagner: And the scorecards were released, the July scorecards. Those will be covered in that session. Again, here, 4:00, we'll do a drill down on the scorecards and what some of the agencies are doing to not only get green but to say green.

Storm water runoff requirements. Section 438. They even got interested in developing procedures for handling storm water runoff. Cost effective technology program. Here's another one. This basically generated on an Environment Public Works in the Senate.

Jennifer Schafer: Yep. Chairman Boxer was very interested in lighting in particular so it got expanded beyond lighting eventually. But it was mostly about lighting.

Mark Wagner: And also you can see where committees also not only have interests but they have jurisdiction over certain committees. So the Environment of Public Works had some jurisdiction over GSA, right? So.

Jennifer Schafer: Mm hmm. And over DOE.

Mark Wagner: You can see they're telling GSA to do some things but they can't tell other agencies to do things. But then this legislation moves on through the Congress and sometimes it gets tweaked and changed. So the accelerated use of technologies originally was cost effective lighting. And then, as this legislation moved on, geothermal heat pumps showed up along the way. So we're going to be doing geothermal heat pumps a lot.

Replacement program. They're looking to replace the existing lighting as well as the heating and cooling technologies. So they're really coming, pushing GSA hard on their facilities for these – both on the lighting and the geothermal heat pumps.

Acceleration planned time table that they want for all of these sections, including the milestones for specific activities. The goal is to complete these, and there's a lot of, – I think what I would say rational language in here. Things such as, whichever achieve greater savings most expeditiously. So some of these aren't hard and fast nailed down on all four corners. There's some at least sensible – an allowance for sensible thinking out there.

And within six months GSA shall ensure that a manager's designated to be responsible for implementing this. And submitting a plan to comply with this. Again, submitting a plan, I think this is something where Congress will be looking back in the 111th Congress next year to see where the progress is on these.

This plan shall be comprehensive. A lot of bullets up there. You're going to identify activities. You're going to require – tell us how much funding you're going to need. You're going to describe the status of the implementation. You're going to identify your procedures, your recommendations. You're going to work with OMB for alternatives in budget process. And you're going to recommend a plan for implementation.

So they got really specific even in terms of what the plan should be for GSA on this. And they authorize for a million dollars per year to do this. Now, I said authorize. I didn't say appropriated. Okay? Don't get real excited on me.

Jennifer Schafer: And it's already not enough.

Mark Wagner: That's right. Okay. Public building lifecycle costs. Section 441. How many of you are familiar with 42 USC 8254 sub paragraph A-1. That's the one that says, "Lifecycle costs effective for buildings for 25 years." We're kind of all familiar with that. We've seen that one before. They changed 25 to 40. It's the one little change they made.

Jennifer Schafer: It's a big one.

Mark Wagner: I'm interested to hear if anyone thinks this is a big deal or not. I think it's one of those, "Yeah, kind of slid by there. And what kind of impact we're going to see on this?"

Jennifer Schafer: Have people been paying – has anybody had that brought to their attention or focused in on this? Yeah? Okay.

Mark Wagner: It'll be interesting to see what the implications are of this thing. Now we're going to move on to the 500 sections. These are mostly on the energy saving performance contracting. A whole section on that. I am pleased to announce that the Congressional notification for energy savings performance contracting is no longer.

Jennifer Schafer: And the bill actually doesn't say that. It just adds a requirement to report termination penalties. And then strikes a section, which was the Congressional notification. As you guys know, we had a Congressional motivation initially with this program at $750,000.00. Which was not very large. And that was increased to 10 million. And then the Department of Defense made some changes to 7 million. And we've been playing with this a long time. And it really has been a barrier to moving more quickly through the system with projects. We were happy to see that go.

The effect of the section is on the DOD as well as on the Department of Energy and the rest of the federal government. Because we also added language in the Defense bill that said essentially, "You got to do what the rest of the government does. You won't have your own special little cap any longer. So just do what everybody else does."

Mark Wagner: And that was actually in a separate legislation. That was a Title 10 Defense Bill. So there were actually two different pieces of legislation that had to be amended. So the practical effect is that no longer do you have to take several months to develop and then send up to Congress and wait 30 days for the Congressional notification on these projects. I think it was a realization on

Congress' part that this was just slowing projects down. And they said, "We want you to do projects so fine, just you know give us –

Jennifer Schafer: And they get the reports anyway.

Mark Wagner: Give us a report anyway and that'll be good enough.

Financing flexibility in Section 512. It actually allows appropriated funds to be combined with ESPC projects.

Jennifer Schafer: Maybe. That's the way it's written. But there are questions about that. Does it conflict with the base ESPC statute? Does it conflict with practicality issues? How can this actually be affected? And I think that's going to shake out in the flesh part as opposed to the bones, if it shakes out. And so I think that's one to watch.

Mark Wagner: But this was important to get this, shall we say foot in the door. The door unlocked if you will. The question of whether we're going to open it and walk through it is yet to be seen. But I think this could have some interesting implications in the future.

This section, 513, basically says an agency can't on their own limit projects to less than 25 years. So an agency can't say, "Look, we don't like to do anything over 15 years. Okay. Just because that's what we like to do. So that's our policy." You can't set a policy to do that.

Jennifer Schafer: You can still pick that if you're a facility and you want to do a project and you want to do one that's no longer than X amount of years. But your leadership cannot tell you that that's the way it's going to be.

Mark Wagner: Yeah. It can't be across the board. If a project makes sense and if cash flows at 15 years then that's great. But it can't be an agency saying, "Don't do anything over a set amount of years." It's basically allowing the flexibility to go as far as 25. Question?

Permanent reauthorization. This is the one I like the best because no longer will there be a lapse in authority. ESPC project programs actually started kind of as a pilot program and it said do it for five years. So what they kept doing was reauthorizing it for five years. And then as many of you may recall back in 2003 the Energy Bill didn't pass that had it. And the program actually lapsed. We couldn't do ESPC projects for the whole fiscal year of 2004.

So we worked hard on this. This was a scoring issue too because they were actually scoring this. And when you make something permanent, trust me that scoring number gets really big.

Jennifer Schafer: Well this was interesting. They score ESPC authority at about 350 million dollar a year. Assuming that's the sort of run rate. And some years it has been and in some years it hasn't been.

So our really big score came in 2005 when we got ten years. They only score ten years out so there were only a couple years they had to cover. But this provision was a 450 million dollar provision in the bill. We all know it doesn't really cost anything. But that's the way they score it congressionally. So it was a bit of a lift to get them to go ahead and make this permanent. But we will not have to face that issue again.

And the scoring thing that came up in 2003 has really been a thorn in our side on this program for a while.

Mark Wagner: Now scoring – many of you are probably familiar with scoring, particularly from an agency standpoint or OMB. Congressional scoring from the Congressional Budget Office is a little different. What they do is for the purpose of what does this bill cost or what do we expect it to cost. So tax bills get scored. Spending bills get scored. When they say, "Oh there's a 2 billion dollar tax bill." Well that's CBO going, scratching their head and making an estimate of what this is going to cost the Treasury. And that's for purposes of trying to stay within certain budget allocations within Congress.

So when Congress is trying to stay within a certain cap for spending for a year, issues like this of scoring when they get into the billions of dollars get to be, you know 400 billion dollars a year times ten starts to get into, you know billions of dollars. So that's why this has been such problematic over the years. So I just want to kind of cover that when we're talking about scoring.

Definition of energy savings. An important one too because it expanded the definition of what energy savings could cover to include co-generation. It did not explicitly expand it to renewable energy, even though renewable energy is allowed because –

Jennifer Schafer: And this is exactly the scoring issue. Because both the House and the Senate had the exact same provision that said you can do onsite power gen to co-gen. And you can do renewables. We're going to open it up to that. And then in conference when CBO scored it they said, "Oh that's a half a billion dollars we're not sure we can afford in this bill. So we're just going to take out the renewable provision." So that was significant.

Mark Wagner: So you're allowed to do renewables under ESPCs. It's a long held position. Assistant Secretary of Energy put out a government wide memo on all this. This was an attempt to kind of put it in statute, codify it and never have this question be raised again whether you could or not. But it had to be pulled because of the scoring. Don't think that it was because it was pulled that you can't do renewables. It was just kind of like, can we put this issue to bed and never have it be raised again?

Jennifer Schafer: Apparently we can't yet.

Mark Wagner: That's right. Third bullet is interesting. It allows the sale of excess power generated from onsite renewable energy. This was an effort to try to help finance large renewable projects on sites if you are able to sell some of the excess power.

Jennifer Schafer: So whereas they don't explicitly authorize that you can do the renewables, they do allow you to sell the excess power from those renewables that are being put on.

Mark Wagner: So I guess it's okay.

Jennifer Schafer: It's not a problem.

Mark Wagner: And it also allowed water savings on interior as well as exterior applications. Clarified an issue there. Was the '05 energy bill expanded to water?

Jennifer Schafer: Yes. I think it was '05.

Mark Wagner: But this just further clarified where you could use the water savings.

Retention of savings. There was a, oh a thorny little problem of two conflicting statutes within how much agencies could retain of savings. And this kind of corrected a legacy problem.

Jennifer Schafer: We had a 50 percent. Agencies can now retain 100 percent of the savings. And so we just got rid of that 50 percent, which had not been gotten rid of when they went to 100 percent. Now, obviously this is still not something that's been worked out in guidelines and all of that type of thing. But we're hoping getting rid of the conflicting provision will help that move along a little bit.

Mark Wagner: Training. FEMP is required to train contracting officers within the government to negotiate and conclude effective and timely projects for ESPC. Not that they aren't already training. But they're now required to do this. And actually, I think FEMP is stepping up their efforts to do training. So if any of you need your COs trained out there please contact Richard Kidd our new FEMP director. If you haven't met him you should.

Study of energy savings in non building applications. This is quite interesting because Congress is saying, "Hey, if this stuff is so good to finance things for buildings how about for mobility - things that move as well as federally owned equipment used to generate electricity? Translate that to dams." And I didn't swear. Okay. Things that hold water back.

Jennifer Schafer: This has been an issue that's been really buzzing around for about eight years; seven, eight years. A number of companies and facilities would like to be able to upgrade the B2 Bomber with, you know an ESPC type program or a fleet of tanks or whatever it might be as a way to do that without needing large sums of appropriated dollars. So they looked at the ESPC as a model. Unfortunately it became an issue or an interest right about the time that scoring became an issue. And if you think trying to do ESPCs for buildings was a big score to swallow, mobility was huge. And so it's been – that's why it's designed currently as a pilot program to really look at it and see. A study and see how it might work.

Mark Wagner: Right. This is a study. In fact that study's already underway. And they're looking to conclude that. This has been studied a lot already. But this is Congress saying, 'Okay, go do a study and come back and tell us whether we should actually change the authority to be able to do that." So it's kind of the first step towards that.

Also there was a provision, interestingly enough in the Defense Bill that that just kind of goes to show, I mean we're chasing after all this other stuff to try to fix it. And then within DOD there was a provision that would literally, I'm not joking here, prohibited the use of ESPCs, UESCs and EULs, its enhanced use leases, to meet the DOD's requirement of 25 percent renewable energy.

Jennifer Schafer: Yeah. And here again, I'm going to sound like a one song wonder. But it was a scoring issue. Somebody said, "Hey, DOD has this great goal of 25 percent renewables by the year 2020. Let's codify that. Let's make it a law." Well, if you actually mandate it then they want to score it. And they recognized that people were going to get that done through financing projects. So there was going to be fictitious score. So now you've got this score. So they say, "Oh, well the way you're going to meet your requirement that we're now giving you instead of your goal, we're not going to allow you to do that. So good luck. Oh we're not going to give you any appropriated dollars either because that would score too. So now we'll take it from a goal to a requirement but give you no way to make it happen."

So that language did come out and it was something that the Department of Defense worked very hard on. And our organization's worked very hard on as well. We'd rather have you have a goal and be able to meet than have a requirement that there was no way in God's green earth to meet.

Mark Wagner: So it just shows you how sometimes Congress can get a little – go a little too far in their zeal to save energy and promote some of these programs.

Alright. We're done with the ESPC sections. If there are any questions I am going to move on. Cause now I'm going to start moving quicker because there's less detail. There's a bunch of other, what I call 500 sections in here. We're going to establish PV on federal buildings and GSA is going to help pay for that. We're going to prohibit the Coast Guard from using incandescent lights after January 1. I call this the Joe Sable provision – I just joke with him. No, but again, this is how you have a particular committee that has jurisdiction over the Coast Guard and they put this provision in.

Standard solar hot water heaters, at least 30 percent of our new or major renovated buildings will be using solar hot water. Federal procured appliances with standby power. We've seen a lot of this, but it's now a new purchasing requirement of not more than one watt. Federal procurement of energy efficient projects, we're going to have an updated catalog listing. It's an amendment to tweak that.

Procurement of acquisition of alternative fuels are going to be required too – synthetic fuels must specify that the greenhouse gas emissions be less than or equal to conventional fuels. Government efficiency status reports. Looks like OMB's going to keep making reports. Kind of looks like scorecarding stuff again. OMB – oh, yes, scorecarding stuff again. In a third section in there. I'll tell you, they really like this idea of scorecarding. So don't think you're going to get away with it, right? Overall progress recommendations for action. Enter description of the compliance. So at least we know how to do this already.

And then there's a FERC requirement that FERC's going to conduct a national assessment of demand response. In section 529.

Let me go on a new provision. Some of this stuff that you may have heard of that didn't make it into the legislation. There was a provision in both House and Senate bill, they were a little different, to allow agencies to enter into long-term agreements for purchasing of power generated just by renewable energy. Thirty years in one bill, 50 in another.

Jennifer Schafer: Yeah.

Mark Wagner: The reason for this was how do we help finance large renewable power plants, whether they be onsite or offsite of federal facilities. One way to do that is to lock into long-term purchase agreements. Cause then the project people or whoever is going to build these for the government know they have a project that they can take to the bank if you will and finance it. So this was the idea. The provision was not adopted unfortunately.

Jennifer Schafer: And it was quite different in both bills. It wasn't just the term. One of them was for efficiency projects as well as renewables, which would have dealt with this UESC issue that was brought up earlier. And one was just on renewables. And then, oh, here we go again, there was a scoring issue.

Mark Wagner: That's the main reason why this wasn't adopted. It wasn't a fundamental public policy reason that we didn't want to do this. It all got down to the bucks. And the almighty CBO Saying, "Well, if this is going to make that energy bill less instead of a 10 billion dollar energy bill it's going to be a 12 billion dollar price tag we're going to slap on it or whatever the scoring –

Jennifer Schafer: It was almost a billion dollars.

Mark Wagner: I'm going to move real quickly. There were some, for those of you interested in the federal fleets and biofuels infrastructure, there were some sections on fleets to require – no agency shall acquire a light or medium duty vehicle that's not low greenhouse gas emissions. And the EPA is going to be setting some guidance on what those cars and trucks look like.

There are some conservation requirements. Reduce consumption of petroleum by 20 percent by 2015 using '05 as the baseline. And the goal is that 20 percent reduction. And DOE is going to develop regulations to include the milestones, annual reporting, and the agency guidance plan for fleets. So they're getting serious not just on buildings, but the vehicles that drive in and around them.

Fueling centers. We're going to install at least one renewable fuel pump at every federal fleet center no later than 2010. And the president's going to report back to Congress on how we're doing on this. Again, I think they're pretty serious and want to be kept updated.

There was another group of provisions that I would say were outside of just the federal government. So I didn't want you to think they're just picking on you guys. It's everybody. There are a lot of provisions to promote residential building efficiency in the bill. I'm not going to get into any of the details. This is just kind of a list. They were looking at high performance commercial buildings, industrial buildings, data centers, high performance schools, institutional entities and public housing.

So I put this up here just to give you a flavor that Congress really was getting serious about energy efficiency. Not just in the federal buildings but all across the country in all sorts of buildings. So there are a number of initiatives to help these particular sectors.

Again, I want to go back to some other provisions that you may have heard about and I think that were relatively important. Some of them directly impact the federal government. Some of them are even broader that were not adopted. There was an effort to pass a national renewable energy efficiency standard that basically would require utilities to produce renewable energy. Fifteen percent of their energy would have to be renewable by 2020. It was a sliding scale.

Jennifer Schafer: You could make that through your efficiency activities, which was, a big fight between people who really wanted to push renewables and people who didn't have renewable assets – and I'm talking about fight within, you know among senators and congressmen. You know there are regions of the country that feel they didn't have a lot of renewable assets and really needed an efficiency piece to that. And so there was a big fight and we ended up at 11 percent renewables and 4 percent efficiency. Up to 4 percent.

Mark Wagner: You know there are about 20 – I don't know what the count is now – twenty-seven states that have some type of RES standard mandate. And this was an effort by Congress looking at it to say, "Hey, maybe we need a national standard." And then there'd be a question, "Well what about those state programs?" Those are all being looked at. But there was a lot of heavy lobbying against this provision. And it failed. It was interesting; it failed actually in the Senate who had passed it several times before this in previous Congresses and sessions. And the House never passed it. The House passed it this time and the Senate didn't. So gives you an idea of the crazy politics that go on sometimes.

This is one I think that we will, we may see again.

Jennifer Schafer: Yeah. We'll definitely see this come up again probably next year.

Mark Wagner: And this may come up in the context of carbon cap and trade legislation. This may come up on its own. But this was very close. Couple of votes.

Jennifer Schafer: Yeah.

Mark Wagner: This one missed. This would have had, I think a huge impact. Because what you would have seen is utilities moving towards renewable energies even a lot quicker than many of them are right now. Many of them embrace them. That's good. But this would have, I think had a nationwide program. You see pockets of the country where it's embraced. This would have been a national effort. So stay tuned for this because I don't think one's done yet.

Tax incentive. There were a number of, and still are, tax incentives for renewable and efficiency energy. Several different provisions many of you may be familiar with wind tax credit as also known as the PTC, production tax credit.

Jennifer Schafer: And this includes also geothermal and certain kinds of hydro. So it's not just wind. But that's the biggest piece of it. So that's become the shorthand for describing the production tax credit.

Mark Wagner: Then there's the ITC which is primarily for solar. The investment tax credit. Both of these are expiring at the end of this year. Now the reason these are important is because there are projects out there that can't go forward without these tax credits. And as they expire, if I've got a project I'm trying to put together and I can't have it in service or in place as – placed in service is the operative words the IRS likes to use. If I can't have it placed in service by December 31 of this year I can't take the tax credit. Well, I'm trying to get financing. I'm trying to get it designed. I'm trying to get it in the ground. I'm trying to get it built, done and operating by December 31. If I can't do that then I'm not going to the bank, I can't get financing. That project's not moving.

So that's what's happening to a lot of renewable projects out there. And what happens is Congress has been renewing this thing and renewing it for a year. And that's not a lot of runway, obviously, to do a renewable project when it takes you 18 months to get a wind turbine. Or whatever it might be at this point.

So what's happening – and why do they only do it for a year, Jennifer?

Jennifer Schafer: Oh, something about scoring. Budget impact.

Mark Wagner: A tax benefit, credit if you will, is actually money not coming into the Treasury, so that costs the federal government something.

Jennifer Schafer: This is an even bigger pissing match than what we saw in the Energy Bill. And we have had – I mean it is huge fight. We've had I think six votes in the House and seven votes in the Senate on clean energy tax credits over the last year. Not even a year. And we can't get it done. And the question isn't, do you not support clean energy tax credits? Everybody supports clean energy tax credits. The question has been, how do you pay for clean energy tax credits? Even more - Do you pay for clean energy tax credits?

And the fight now is within the Senate where they're using procedural rules to, hey I have to have 60 votes to do anything in the Senate right now. And the Republicans have said, "We don't believe that tax credits need to be paid for. We don't have to pay for that because they're just extensions of existing credit. They should not have to be paid for. You don't have to offset them with other tax increases."

Well, the Democrats are saying, "We ran saying we're going to pay for everything. So if we're going to give you tax credits we're going to take it from somewhere else." So –

Mark Wagner: Otherwise known as offsets.

Jennifer Schafer: Offsets. So first the question was, where are those offsets coming from? Then the credit was, well even if they're offsets that everybody agrees is not a bad idea, oh the ability for hedge fund managers to shelter money overseas and never pay taxes on it exists. Nobody really disagrees with that being something that might need to go away. We just don't believe that tax credits should be offset at all with pay for's. So that basically is the only reason these clean energy tax credits have not been reauthorized yet. And they probably, in my estimation, won't be this year. Which means we'll have a period when they won't exist. And when they do put them back in next year, which I'm pretty confident they will, they'll make them retroactive. But this doesn't help the problem that Mark was talking about which is, I'm developing a project. And I don't know if I can take the money or not.

Mark Wagner: I don't do projects retroactive.

Jennifer Schafer: No. None of us do. So it is a serious problem.

Mark Wagner: Yeah. And it really is. Because on the offsets if you try to close some tax loopholes there are folks who will say, "Oh, you're raising taxes." And then that becomes a political issue in and of itself. So it really becomes where you're trying to find the offsets to pay for this new tax credit incentive that you want to do.

Jennifer Schafer: That some argue isn't new since it's an extension. So you see where the big problems come in.

Mark Wagner: Now there are some optimistic folks. I talked to the Majority Leader's office last week and they think it's got a pretty good chance of passing before the end of the year. But I think Jennifer's right. Worst case scenario is it'll pass next year and we'll move on. But unfortunately, you can't take to the bank, "There's a pretty good chance it might pass this year or next year." You know you just can't.

So what happens is you see projects that are just going into stall mode.

Jennifer Schafer: And over the last week this has been, this tax credit has been sort of paired with the ability to drill in the Outer Continental Shelf. So now not only do we have this, how are we going to pay for it issue? We have this, well maybe we'll let you have this and not pay for it or we'll let you pay for it if you let us drill in the Outer Continental Shelf. So on Thursday a bill or Friday even a bill was unveiled in the Senate, ten bipartisan senators with a very bipartisan bill that covers some drilling and some tax credits and this type of thing. But oh, what's the question still? How are we going to pay for it? So there will be a summit on energy when they come back to work in September and we'll see what happens.

Mark Wagner: And you've got – certainly you have presidential politics now getting involved. If any of you turned CNN on this morning. Just on this issue of Outer Continental Shelf drilling. You have members of Congress that are now on a four week recess. Many of them are back home. And they're hearing about energy and energy prices. So come right after Labor Day you're going to probably see Congress gnarling and gnashing its teeth again trying to figure out what to do. They're going to come back having gotten an earful.

Everything's going to be, I think impacted by presidential politics. Cause then the election will be two months away. Will that make them do something? Will that make them not do something? Just stay tuned. Because that's what a lot of this is getting tied up in. So it will be interesting. It's very hard for a lame duck Congress like this to do a whole lot. If you're worried about appropriations, you're going to see a continuing resolution and it's going to go on until next year. Trust me. So you'll have a continuing resolution for your appropriation bills and it'll be interesting to see if anything passes this fall.

Jennifer Schafer: Even Defense it looks like is going to be a continuing resolution.

Mark Wagner: Which is highly unusual.

Jennifer Schafer: It just never happens so.

Mark Wagner: One other thing, there is also a commercial buildings deduction that is also wrapped up in some of this as well in the tax incentives. So that's one of the other ones.

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